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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-843]

Polyethylene Retail Carrier Bags from Taiwan: Initiation of Anti-circumvention Inquiry on Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

SUMMARY: In response to a request from The Polyethylene Retail Carrier Bag Committee and its individual members PCL Packaging, Inc., Hilex Poly Co., LLC, and Superbag Corp.

(collectively, the petitioners), the Department of Commerce (the Department) is initiating an anti-circumvention inquiry pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act) to determine whether imports of unfinished polyethylene retail carrier bags (PRCBs) on a roll from Taiwan are circumventing the antidumping duty order on PRCBs from Taiwan.¹

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3477.

SUPPLEMENTARY INFORMATION:

Background

The Department received from U.S. Customs and Border Protection (CBP) a sample of merchandise that was part of a larger shipment imported into the United States and that resembles a series or roll of unfinished PRCBs. The particular sample measures roughly 42.5

¹ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam*, 75 FR 23667 (May 4, 2010) (*PRCB Orders*).

inches by 9 inches and the front surface is printed with multi-color graphics and the words “Brush,” “Floss,” and “Smile.” The sample also shows the location of oval handles that have not yet been die cut out of the bags and the color printing registration marks used to print the bag in Taiwan are contained in the location of the oval handles. The sample resembles in-scope, finished PRCBs on a roll in all respects except that the bottoms are open and they lack handles. The merchandise appears ready to undergo the final processing of cutting the unfinished PRCBs to length, sealing the bottoms, and die-cutting the unfinished PRCBs to create the handles of the finished PRCBs. In addition, the Department received from CBP documentation associated with the shipment of this product.

In April 2013, the Department placed two memoranda on to the record stating that it received this sample unfinished PRCB along with proprietary documentation associated with the shipment, and inviting parties to view the sample and submit comments.²

On May 3, 2013, SmileMakers Inc. (SmileMakers) submitted a scope ruling request to the Department regarding certain rolls of unfinished PRCBs that are to be used to “produce customized bags for dentists’ and doctors’ offices.”³

On May 20, 2013, the petitioners requested that the Department issue an affirmative anti-circumvention determination, pursuant to section 781(a) of the Act and 19 CFR 351.225(g).⁴ The petitioners further state that CBP officials had advised them that the practice of importing unfinished PRCBs is increasing and expanding to multiple ports.⁵ The petitioners claim that there is no commercial justification for not completing the PRCB production process at the place

² See Memoranda to the File dated April 18, 2013, and April 24, 2013.

³ See SmileMakers’ letter to the Department, “Polyethylene Retail Carrier Bags from Taiwan (A-583-843): SmileMakers, Inc., Scope Ruling Request: Rolls of Polyethylene Film Tube” dated May 3, 2013 (SmileMakers’ scope ruling request).

⁴ See the petitioners’ letter to the Department, “Polyethylene Retail Carrier Bags From Taiwan/Request For An Affirmative Anti-Circumvention Determination” dated May 20, 2013 (the petitioners’ request).

⁵ *Id.* at 3.

of manufacture and instead locating the final minor finishing operation in the United States except to evade imposition of antidumping duties.⁶

After considering the information placed on the record, the Department has determined to conduct one proceeding in the context of an anti-circumvention inquiry. The parties' submissions demonstrate that both requests cover identically described merchandise. For this reason, we find that it is reasonable and practical to address whether the merchandise at issue is subject to the order on PRCBs from Taiwan in the context of an anti-circumvention inquiry, which will provide for the most comprehensive analysis, under section 781(a) of the Act and 19 CFR 351.225(g). As a result of our determination to initiate this inquiry, we are placing SmileMakers' scope ruling request and the information we received from CBP on the record of this anti-circumvention inquiry.

Scope of the Order

The merchandise subject to the antidumping duty order is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos

⁶ *Id.*

or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners. Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Scope of the Anti-circumvention Inquiry

This anti-circumvention inquiry covers merchandise from Taiwan that appears to be a series or roll of unfinished PRCBs that is ready to undergo the final steps in the production process, *i.e.*, cutting-to-size the merchandise, sealing the bag on one end to form a closure, and creating the handles of a finished PRCB (using a die press to stamp out the opening).⁷

The Petitioners' Request for Initiation of Anti-circumvention Proceeding

As stated above, the petitioners filed a request for a circumvention determination in which they commented on the relationship of this merchandise to merchandise covered by the scope of the PRCB order from Taiwan. The petitioners allege that while the imported unfinished PRCBs are sealed on the sides, the bottom and top are open, and the oval handle has not been die cut. The petitioners contend that completion of these steps would make the bags subject merchandise if they were imported in this condition.⁸

⁷ The unfinished PRCBs, as described by SmileMakers in its scope request, “are made from polyethylene formed into the shape of a tube that is open (unsealed) on both ends; they do not contain any handles, perforations, seams, or seals; they are imprinted with a variety of pictures and designs, depending on SmileMakers requirements; and they all serve the same purpose (*i.e.*, after importation, they are imprinted with medical practitioners’ contact information, cut, punched, and sealed to form small bags that are given out at dentists’ and doctors’ offices, etc.).”

⁸ See the petitioners’ request at 6.

Citing the International Trade Commission (ITC)'s recent sunset review determination of PRCBs from the PRC, the petitioners explain that the PRCB production process can be described as a four-step process consisting of (1) blending polyethylene resin pellets, color concentrates, and other additives; (2) extrusion and film forming; (3) printing; and (4) PRCB conversion.⁹

The final, normal "conversion" step is described in information submitted by the petitioners as follows: "After the printing process is complete, the large roll of film is then cut to size with hot knives that seam the sides of the bags together when cut. Then, the film is fed into bag manufacturing machines where the top and bottom seals are formed and handles are cut out."¹⁰ The petitioners contend that the unfinished PRCBs that are the subject of their request represent an interruption in this continuous production process because, while they have been sealed on their sides, the bottom and top are open and the oval handle has not been die cut.¹¹ Completion of these steps would make the bags subject of the antidumping duty order if they were imported in this finished condition.¹²

INITIATION OF ANTI-CIRCUMVENTION PROCEEDING

Applicable Law

Section 781(a) of the Act and 19 CFR 351.225(g) provide that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind as merchandise that is subject to the order is completed or assembled in the United States. In conducting anti-circumvention inquiries under section 781(a)(1) of the Act, the Department relies upon the following criteria: (A) merchandise sold in the United States is of the same class or kind as other merchandise that is produced in a foreign country that is subject to an

⁹ *Id.* at 4, citing *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand*, Inv. Nos. 731-TA-1043-1045 (Review), USITC Pub. 4160 (June 2010) at I-17.

¹⁰ *See* the petitioners' request at Exhibit 5.

¹¹ *Id.* at 6.

¹² *Id.*

antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the antidumping duty order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in (B) is a significant portion of the total value of the merchandise. As discussed below, the petitioners presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The petitioners state that the merchandise sold in the United States is of the same class or kind as the subject merchandise. The petitioners agree with the Department's statement that the samples "closely resemble" a PRCB.¹³ Moreover, the merchandise is made of polyethylene film and the dimensions of the finished PRCBs are within those of the scope definition. Finally, the petitioners state, because the bag is completely and exclusively dedicated to use as a Dentist PRCB and has been finished to the point where there can be no doubt of its intended use, the merchandise will be subject merchandise within the order on PRCBs Taiwan scope definition when completed.¹⁴

B. Completion of Merchandise in the United States

The petitioners cite to the CBP referral and SmileMakers' scope ruling request to support their claim that the imported rolls are completed in the United States from parts and components produced in Taiwan. All the necessary raw materials for a finished PRCB are entered. Performing the final die-cutting operation in the United States simply finishes the PRCB.¹⁵

¹³ See Memorandum to the File, dated April 18, 2013.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 11.

C. Minor or Insignificant Process

According to the petitioners, the process of converting this product into a finished PRCB is minor or insignificant, particularly relative to the production process as a whole. The petitioners assert that the sealing and cutting operation is a simple step that occurs only at the very end of the multi-step production process. Specifically, the bottom of the bag is sealed with a hot knife and the handles cut by clamping a die to a press and then pressing on the pillow pack.¹⁶ Consequently, the only equipment that is needed seals the bag and cuts out an oval handle.¹⁷ According to the advertisement provided by the petitioners, the equipment needed to accomplish these tasks can be purchased new for \$11,000 to \$13,000.¹⁸ In contrast, the operations performed in Taiwan, the petitioners contend, are highly capital-intensive and technologically sophisticated.

The petitioners further argue that no research and development expenditures are required to perform the simple sealing, and die-cutting operations, as the technically complex research and development activities are performed prior to this stage in Taiwan.¹⁹ Similarly, the petitioners state that minor production facilities are required and that the operations could be performed in a small single-story room.²⁰

Finally, the petitioners assert that the value of processing performed in the United States represents a negligible proportion of the value of the merchandise sold in the United States. Completion of the PRCB can be performed by a single employee, and the capital and marginal costs of the die-cutting operations in the United States are relatively insignificant in comparison

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 11.

¹⁸ *Id.* and Exhibit 10.

¹⁹ *Id.* at 12.

²⁰ *Id.*

to the manufacturing of the imported merchandise performed in Taiwan.²¹ The petitioners further explain that the Department need not collect precise information on the amount of the value added in the United States to conclude that the process is minor or insignificant, but may rather rely on a qualitative assessment to draw this conclusion.²²

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise Sold in the United States

As stated above, the petitioners contend that the value of the processing performed in the United States represents a minor portion of the value of the completed merchandise.²³ Therefore, because most of the value of the finished PRCB is created in Taiwan, the value of the merchandise as entered is certainly a significant portion of the total value of the finished PRCB.

E. Factors To Consider in Determining Whether Action Is Necessary

Section 781(a)(3) of the Act identifies additional factors that the Department shall consider in determining whether to include parts or components in an antidumping duty order as part of an anti-circumvention inquiry. Of these, the petitioners argue that importation of the circumventing merchandise represents a change in the pattern of trade.²⁴ The petitioners assert that prior to imposition of the *PRCB Orders*, no party imported such merchandise for completion into finished PRCBs. The petitioners argue that interrupting the production process prior to completion is neither economical nor rational, and that the only reason not to complete the PRCB in the country of origin is to evade application of antidumping duties upon importation.²⁵

²¹ *Id.*

²² *Id.* at 10 n. 37 (citing *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571 (August 6, 2003), unchanged in *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003)).

²³ *Id.* at 13.

²⁴ *Id.*

²⁵ *Id.*

Analysis

Section 351.225(f)(1) of our regulations directs that a notice of the initiation of an anti-circumvention inquiry issued under 19 CFR 351.225(e) will include a description of the product that is the subject of the anti-circumvention inquiry and an explanation of the reasons for the Department's decision to initiate an anti-circumvention inquiry.

The product that is subject of this anti-circumvention inquiry covers merchandise from Taiwan that appears to be series or roll of unfinished PRCBs that is ready to undergo the final steps in the production process, *i.e.*, cutting-to-size the merchandise, sealing the bag on one end to form a closure, and creating the handles of a finished PRCB (using a die press to stamp out the opening).

Based on our analysis of the petitioners' request, the Department determines that the criteria under section 781(a) of the Act have been satisfied to warrant the initiation of an anti-circumvention inquiry.

With regard to whether the merchandise sold in the United States is of the same class or kind as the merchandise covered by the antidumping duty order, the petitioners presented information indicating that the merchandise completed and sold in the United States is of the same class or kind as PRCBs from Taiwan which are subject to the order on PRCBs from Taiwan.²⁶ With regard to whether the process of converting this product into finished PRCBs is a "minor or insignificant process," the petitioners addressed the relevant statutory factors with the best information available to them at the time of their anti-circumvention inquiry request.²⁷ The petitioners relied on publicly-available information for this purpose, in addition to their own expertise in the production process. Given that the petitioners do not have access to cost or price

²⁶ *Id.* at 10-11.

²⁷ *Id.* at 11-13.

data of either the Taiwanese producer or the U.S. importer, the petitioners relied on their own knowledge of the production process to draw their conclusions and demonstrate that, qualitatively, the value of the conversion of the imported merchandise into subject merchandise is minor or insignificant.²⁸

With respect to the value of the merchandise produced in Taiwan, the petitioners relied on the information and arguments in the “minor or insignificant process” portion of their anti-circumvention request to indicate that the value of Taiwan production for unfinished PRCBs is significant relative to the total value of finished PRCBs sold in the United States.²⁹

Finally, the petitioners argued that the Department should also consider the pattern of trade as a factor in determining whether to initiate the anti-circumvention inquiry. In particular, the petitioners asserted that no party imported merchandise that must undergo the final step of the production process to be converted into finished PRCBs prior to the imposition of the order on PRCBs from Taiwan, as doing so is irrational and uneconomical.³⁰

Based on these allegations, we are initiating an anti-circumvention inquiry concerning the antidumping duty order on PRCBs from Taiwan, pursuant to section 781(a) of the Act and 19 CFR 351.225(g). The Department is initiating this anti-circumvention inquiry with respect to all such merchandise from Taiwan as described above, regardless of producer or exporter. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry. In accordance with section 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(A), we

²⁸ *Id.*

²⁹ *Id.* at 13.

³⁰ *Id.*

intend to notify the ITC in the event of an affirmative preliminary determination of circumvention under section 781(d) of the Act.

This notice serves as an invitation to interested parties to participate in this anti-circumvention inquiry. The Department invites all potential respondents to identify themselves as producers, importers, or further processors of such merchandise and to provide their own evidence and information that may inform the Department's determination. Please contact the official listed under the above heading, "FOR FURTHER INFORMATION CONTACT" for instructions for participating in this inquiry. The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation consistent with section 781(f) of the Act.

This notice is published in accordance with 781(a) of the Act and 19 CFR 351.225(f).

Dated: July 25, 2013.

Paul Piquado
Assistant Secretary
for Import Administration

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